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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,892	05/05/2005	Walter Wolf	016906-0391	8121

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FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

KOSANOVIC, HELENA

ART UNIT	PAPER NUMBER
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3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,892	WOLF, WALTER	
	Examiner	Art Unit	
	Helena Kosanovic	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendments filed 12/5/2006 are acknowledged.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 14-18 and 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Pasch EP 0662901.
2. Regarding claim 14, Pasch teaches an invention as claimed: A cross member 1, 17 (fig. 1) for a vehicle (col. 1, ll. 3-4) and adapted for mounting a heating and/or air-conditioning (HVAC) unit 7 (fig. 2) that has at least one air outlet 8,9 having: a basic body 4, 3 (fig. 1) which is adapted to be transversely mounted between respective sides of a vehicle and which comprises a metal frame member 1 (Fig. 1, col. 2, ll. 20-22) that has at least a partially closed profile cross-section 1 defining a hollow space 4 (fig. 2) axially extending along the frame member 1, said basic body having at least two generally straight subsections 4 which are connected via a third subsection 3 (fig. 1) of said frame member, wherein said third subsection comprises a generally C-shaped portion/L shaped portion (col. 2, ll. 15-17) of said frame member that forms a widened area formed of elements 3 and 17 (fig. 1) for at least partially encircling the HVAC unit

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(the examiner in further discussion uses term C/L-shape portion instead of C-shaped portion/L-shaped portion); at least one air duct 13 (fig. 2) within said hollow space in at least one of said first and second subsections, wherein at least one air duct 13 is positioned for connection to the air outlet 9 of the HVAC unit.

3. Regarding claim 15 said basic body is configured to accept an HVAC unit 7 terminating with the air outlet 9 in approximately the plane of said generally C/L-shaped portion of the frame member and wherein the at least one air duct 16 is positioned to directly connect with the air outlet of the HVAC unit (fig. 2).

4. Regarding claim 16 air outlet 9 opens into at least one duct 13', where element 13' is part of duct 13 between elements 15 and 9 (fig. 2).

5. Regarding claim 17, said cross member further having an adapter element 15 for connecting the air outlet with the at least one air duct.

6. Regarding claim 18, the basic body is configured to receive an HVAC unit 7 terminating with air outlet 9 on one side the plane of said generally C/L-shaped portion of the frame member, wherein the at least one air duct 13' is diverted in a portion at said generally C/L-shaped portion of the frame member, and wherein the at least one air duct is positioned to connect with air outlet 9 of the HVAC unit (fig. 2)

7. Regarding claim 21 at least one air duct 16 is defined by the basic body (fig. 2).

8. Regarding claim 22 at least one air duct 16 having a separated duct member 13' (fig. 2).

9. Regarding claim 23 said separate duct member having a duct 15 formed of synthetic resin material/ plastic (col. 1 and 2, ll. 58 and 1 respectively).

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10. Regarding claim 24 said hollow space having a synthetic resin (col. 1 and 2, ll. 58 and 1 respectively) reinforcing member 16 (fig. 2),
11. Regarding claim 25 said synthetic resin reinforcing member 16 having a reticulated structure (fig. 3).
12. Regarding claim 26, said adapter element 15 is formed from synthetic resin (col. 1 and 2, ll. 58 and 1 respectively).
13. Regarding claim 27, said cross member further having a fourth subsection 17 located in the widened area (fig. 2) and also connecting first and second subsection 4, whereby third 3 and fourth 17 subsection are adapted to generally surround the HVAC unit (fig. 2)
14. Regarding claim 28 a vehicle (col. 1, ll. 3-4) having a cross member 1 (fig. 1) and an HVAC unit 7 (fig. 2) wherein said cross member having a structure defined according to claim 14.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasch EP 0662901 in view of Mochizuki JP 11-319552.

Pasch teaches the invention as discussed above but is silent about having duct 14 between two ducts instead between two walls of duct 4.

Mochizuki teaches a duct 3 with duct 4, 5 above. Having a second duct below duct 3, the courts have held that duplication of parts has no patentable weight unless a new and unexpected result is produced (MPEP 2144 VIB). Adding additional duct 4,5 below duct 3 is a duplication of element 4,5 for providing the expected desired path of the airflow.

It would have been obvious to one ordinary skill in the art to have the Pasch hybrid structure modified with the Mochizuki ducts placed on both sides of the central duct in order to improve formability and mount workability of an air conditioning duct (Abstract, ll. 1-2).

Response to Arguments

16. Applicant's arguments with respect to claims 14-28 have been considered but are moot in view of the new ground(s) of rejection.

17. Regarding the Applicant's argument that: "Pasch's cross member 1 (Figs. 1 and 2) does not have any area that is "widened," i.e., the metal frame member is linear and has a constant cross-section along its entire width" the examiner disagrees. The Pasch cross member has an opening 8 that divides element 3, and therefore element 3 does not have constant cross section. Furthermore element 3 is wider than element 4 and in

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this context, too, cross member 1 does have widened area (fig. 1). Furthermore widened area is construed with elements 3 and 17 that surround the HVAC unit.

18. Regarding the Applicant's argument that:" there is no basis suggesting a combination of Pasch and Mochizuki, and that even if the references were to be combined, the combination would not produce the subject matter claimed in claims 14-28" the examiner disagrees, because the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Pasch element 12 (fig. 1) ends as a tree ductwork 26, 27, and 28. The Mochizuki teaches two ducts parallel to each other, wherein having a third one is a matter of a duplication of parts as discussed above. It is obvious to one of ordinary skill in the art to have the Pasch structure modified with the Mochizuki duct placed on the both sides of the central duct (instead of walls as Pasch teaches) in order to improve formability and mount workability of an air conditioning duct as Mochizuki teaches (see Abstract II. 1-2).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helena Kosanovic whose telephone number is (571)272-9059. The examiner can normally be reached on 8:30-5:00, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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